IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 263 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALDEVJI SARDARJI - Appellant(s)

Versus

MAHOMADSHAH SULTANSHAH FAKIR & 1 - Defendant(s)

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Appearance :
MR MEHUL SHARAD SHAH for Appellant(s) : 1,
MR SN SHELAT for Defendant(s) : 1,
MR MITUL K SHELAT for Defendant(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 16/11/2005

ORAL JUDGMENT

1. The judgment dated 28.1.1982 of Motor Accident Claim Tribunal, Mehsana awarding Rs. 28,300/- with running interest at the rate of 6% is under challenge in this appeal.

2. The relevant facts in brief are that the bus driven by respondent No.1 and owned by respondent No.2 dashed with the cycle by which the appellant, aged around 20 years, was traveling on left hand side of the road at around 9.00 A.M. on 21.3.1981 on Patan-Chanasma Road, near Patan. The appellant suffered multiple fractures and had to undergo treatment for more than one month. The appellant was, before accident, engaged in the work of digging pit for electrical poles and was getting Rs. 3/- per pit and was preparing six such pits in a day.

When the appellant approached the Tribunal with a claim for compensation and damages, he was awarded Rs. 12,000/- for pain and suffering, Rs. 1500/- for loss of wages, Rs. 1000/- for expenses of attendants and transport, Rs. 12,800/- for pecuniary loss due to functional disability of 25% and Rs. 2,000/- for future discomfort.

3. The impugned award was assailed by learned Counsel Mr. Mehul S. Shah mainly on the grounds that the income of the appellant was assessed at Rs. 8/- per day despite clear oral evidence of appellant's earning of Rs. 18/- per day; that loss caused due to permanent disability and future loss of income was not properly assessed and that interest on the amount awarded by way of compensation was on lower side at 6%. He submitted that the total amount of compensation and interest thereon were required to be enhanced on the aforesaid three counts so as to fully allow the appeal and enhance the total compensation by additional sum of Rs. 30,000/-.

3.1. Relying upon the judgments of this Court in Gujarat State Road Transport Corportion Vs Kamlaben Valjibhai Vora [2001 (3) GLR 2528], Manoj Rambhai Gadhvi and others Vs Vaghasia Balubhai Khodabhai and others [2000(1) ACJ 294] and Mohanbhai Gemabhai Vs. Balubhai Savjibhai and others [1994 ACJ 260], it was submitted that the rate of interest prevailing in the years intervening between the date of accident and now has been varying from 10 to 15% and the Court has consistently awarded interest on the amount of compensation at rates higher than 10%. Relying upon the judgments of this Court in Ritaben Alias Vanitaben Wd/o. Dipakbhai Haribhai & Anr. Vs Ahmedabad Municipal Transport Service & Anr. [1999(1) GLR 388] and United India Insurance Co. Ltd. Vs Chandulal Gokaldas Mehta (Decd.) through Sunilbhai C. Mehta [2003(3) GLR 2386], he submitted that the prospective income of the appellant has to be taken into account in applying multiplier to the average income of the injured-appellant. It was submitted that not only the appellant was actually earning Rs. 18/- per day at the time of accident but with his experience and advancement in career, he could only be expected to earn more in the subsequent period of his life. There was no dispute about the fact that, according to the opinion of doctor, total disability taking the entire capacity of his body was assessed at 20% and he would not be in a position to carry on work of preparing pits as he was doing before the accident. There was also no gainsaying that the appellant had suffered permanent partial disability at a young age and,

therefore, pecuniary loss ought to have been multiplied by 20 times instead of 15 times.

4. Learned Counsel Mr. M.K. Shelat, appearing for the respondents, submitted that the Tribunal had rightly fixed the figure of average annual income on the basis of Rs. 8/- per day since the work in which the appellant was engaged was nowhere stated to be of permanent nature. It was also submitted that the application of proper multiplier took into account loss of prospective income and multiplier of 15 was, having regard to the young age of the appellant, correctly applied by the Tribunal.

5. Since there is no serious controversy about the appellant being an able bodied young man at the time of accident, which occurred in the year 1981, it could be safely presumed that he would have earned his regular income at least as a labourer and lived a regular life without burden of a life long physical disability. Sufficient medical evidence was led before the Tribunal to prove that the appellant would limp while walking on uneven ground and it would be painful for the appellant to work as before besides having informity of being unable to do hard work by left hand. There was uncontroverted evidence to the effect that, after the accident, the appellant was not in a position to do the labour work and he used to go to the field of his father for the work of keeping watch over the field. The doctor who issued the certificate of permanent disability, had found that the left leg of the appellant had shortened by ½ inches. Terminal flexion

of the left knee and dorsi flexion of left wrist was limited by various degrees and shoulder movement was also affected. In these facts, it could not be gainsaid that the appellant had suffered injuries, pains, treatment and permanent loss of the earning capacity which was considered to be 25%.

6. In the above facts, reduction of income of the appellant from Rs. 18/- to Rs. 8/- per day was not fully justified even on the presumption that he might not have been employed throughout the year. Having regard to the rates of minimum wages for unskilled labourers 25 years ago, the daily wage and annual income on that basis should be assessed for the purpose of applying the multiplier at Rs. 10/- per day and Rs. 3600/- per annum.

6.1. As recently held by the Supreme Court in New India Assurance Company Ltd. Vs. Charlie and Another [(2005) 10 SCC 720], the Multiplier method involves ascertainment of loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last. Referring to the earlier judgement, in Trilok

Chandra's case [(1996) 4 SCC 362], it was observed that the appropriate highest multiplier was held to be 18. The Supreme Court in that case enhanced the amount of compensation and ordered that it would carry interest at the rate of 7.5% p.a.

7. Following the above line of the judgments and recent fall and previous rise in the general rate of interest on fixed deposits, it would be just and reasonable to award interest at the rate of 9% on the additional sum of compensation. Accordingly, calculating pecuniary loss on the basis of Rs. 75/- per month and Rs. 900/- p.a. and applying multiplier of 20, the appellant should be awarded total Rs. 18,000/- resulting into an additional amount of Rs. 5200/-. Similarly, the amount awarded for future discomfort has to be increased from Rs. 2,000/- to Rs. 6,800/- in view of the permanent disability and difficulty in performing daily chores by the appellant. Since the impugned award is made within one year of the accident, any upper revision of the rate of interest on the amount of compensation already awarded will not result into any significant relief. However, the amount of additional compensation awarded by this judgement shall be paid with interest at the rate of 9% p.a. from the date of application till the date of payment. The amount of compensation awarded by this judgement alongwith interest ordered to be paid thereon shall be deposited by the respondents in the Motor Accident Claims Tribunal, Mehsana within a period of two months from the date of this judgement. Decree shall be expeditiously drawn accordingly. The Tribunal shall

pass the appropriate order regarding disbursement of the additional amount of compensation to the appellant and may not direct deposit of the additional amount in Fixed Deposit unless there are sufficient reasons therefor.

(D.H. WAGHELA, J.)

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